

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5976 OF 2022

Akshay S/o Dnyaneshwar Maske

-- Petitioner

Vs.

State of Maharashtra and others

-- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.I. Dhatrak, Advocate for Petitioner

Mr. N.R. Patil, AGP for Respondent Nos. 1 to 3

CORAM : MANISH PITALE, J.

DATE : 26th SEPTEMBER, 2022

The petitioner is aggrieved by the orders passed by the Tahsildar and the Sub-Divisional Officer (SDO) under Section 48 of the Maharashtra Land Revenue Code, 1966.

2. By an order dated 06/02/2020, the Tahsildar imposed the penalty of Rs.5,77,000/-, on the petitioner for having allegedly illegally transported one brass of minor mineral (sand).

3. The petitioner filed appeal before the SDO, *inter-alia*, contending that the amount of penalty was exorbitant for the reason that only five times the value of the allegedly illegally transported sand and royalty of Rs.400/-, could have been

imposed in the present case, according to the petitioner, at the most it could have been about Rs.25,400/-.

4. On 15/12/2020, the SDO entertained the appeal and directed that the petitioner shall deposit 1/4th of the amount of penalty and in case of failure to deposit such amount, the appeal would stand dismissed. Since the petitioner could not deposit the said amount, appeal stood dismissed and the petitioner has been constrained to file the present writ petition, challenging both the orders.

5. The learned Assistant Government Pleader has appeared on behalf of the respondent Nos.1 to 3. Service of notice is not necessary on respondent No.4, because he is the person, who was issued notice initially on the mistaken belief that he was owner of the vehicle, which was used for the aforesaid act. Therefore, issuance of notice to respondent No.4 is dispensed with.

6. This Court has considered the orders passed by the two authorities below. It appears that the amount of penalty that could have been imposed, prima facie, on the petitioner could have been for alleged illegal transport of one brass of sand, which in terms of the relevant rules comes to five times the value of such sand. The learned Assistant Government Pleader does not dispute that the said amount may come to about Rs.25,400/-.

7. In these circumstances, prima facie, it appears that the Tahsildar imposed penalty to the extent of Rs.5,77,000/-, by taking into consideration an undertaking earlier given by the petitioner when he was apprehended for having undertaken such illegal activities.

8. In such a situation, the SDO could have entertained the appeal for considering the said contention raised on behalf of the petitioner on merits. But, it appears that such an occasion did not arise because the petitioner failed to deposit 1/4th of the penalty amount, as directed by the SDO.

9. The learned counsel for the petitioner, on instructions, submits that the petitioner is ready to deposit an amount of Rs.25,400/- and also an additional amount of Rs.1,00,000/-, with the SDO, without prejudice to his rights and contentions, so that he is afforded an opportunity of consideration of his appeal on merits.

10. He also seeks release of the vehicle on deposit of such amount and also undertakes to submit a personal bond in terms of Section 48(8)2) of the Act and Rule 9(2) of the Maharashtra Land Revenue (Extraction and Removal of Minor Minerals) Rule, 1968.

11. In view of the above, the petition itself can be disposed of by giving appropriate directions.

12. Accordingly, the petition is partly allowed.

13. The impugned order passed by the Sub-Divisional Officer dated 16/04/2021, is set aside. The matter is remanded to the SDO, for consideration of the appeal afresh. The petitioner shall appear before the SDO on 10/10/2022.

14. During pendency of the appeal before the SDO, the vehicle of the petitioner, bearing registration No. MH-29-BE-1406 along with Trolley, shall be released subject to the petitioner depositing an amount of Rs.1,25,400/-, with the SDO and also furnishing a personal bond in terms of Section 48(8)(2) of the Code and Rule 9(2) of the aforesaid Rules. Upon deposit of such amounts, which shall be without prejudice to the rights and contentions of the petitioner before the SDO, the vehicle shall be released forthwith.

15. The SDO shall make an endeavor to decide the appeal expeditiously.

JUDGE